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ABSTRACT

The creation in 1971 of the National Advertising Review Board (NARB) and its investigative arm, the National Advertising Division, was a response by the advertising industry to the pressures and criticisms of consumerism that had mounted during the previous decade and peaked as the 1970s began. In contrast to previous periods, the 1960s and 1970s posed a greater threat to advertising because of government actions; in turn, the industry responded with a mechanism of self-regulation far surpassing any previous efforts, and including methods of detection, methods of adjudication; and sanction procedures that were meaningful reforms in the area, although somewhat weaker modifications were adopted. This effort at self-regulation serves the trade both as a means of eradicating deception and as a means of dealing with public criticism and its attendant threat of government regulation; indeed, there appears to be an inverse correlation between the rise of NARB and the diminution of criticism and government interest in advertising. (DF)

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The National Advertising Review Board, 1971-1976

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ERIC J. ZANOT is an assistant professor of advertising at The Pennsylvania State University. He holds B.A. and M.A. degrees in journalism from Penn State and a Ph.D. in communications and organizational behavior from the University of Illnois.

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In 1971 the advertising industry set up a new mechanism with the avowed purpose of curtailing deceptive advertising. Essentially it is a two-tiered mechanism: the National Advertising Division (NAD) of the Council of Better Business Bureaus (CBBB) initially investigates and judges cases. The National Advertising Review Board (NARB) acts as a second and higher court of appeals and renders final judgment on all matters that cannot be resolved by NAD. In their first five years of operations from June, 1971, through June, 1976, NAD and NARB processed over 1,000 complaints against national advertisers and hundreds of advertisements judged deceptive were modifed or discontinued. The Federal Trade Commission, the government agency charged with curtailing false and deceptive advertising, dealt with fewer cases during the same period.

NARB is more visible than NAD. Both are often subsumed under "NARB." It has its critics, many of whom doubt that any trade-funded regulator can deal with deceptive advertising objectively. It also has supporters within advertising, within government and among the public as an amibitious attempt to deal with one of the industry's continuing problems: false and deceptive advertising.

The first five years of NARB's existence were critical because its premises and principles had been tested by a large volume of casework. This monograph presents a five-year history of NARB and evaluates its performance during that time. It also discusses the Advertising Standards Authority (ASA), the British self-regulatory mechanism after which NARB was patterned.

Advertising self-regulation is general reactive—a response to external social, economic and political forces impinging upon advertising, including the threat of government intervention. Although altruism has not been absent, self-regulation is defended as enlightened self-interest: to curtail deceptive advertising is to dampen public criticism and forestall legislation.

The first serious attempt on the part of the industry to police itself came in 1911 with the publication of the *Printers Ink Statute*

and the subsequent "truth crusade."[1] This was in the muckraking era characterized by the work of writers such as Samuel Hopkins Adams and Edward Bok. It was also the era of the first government incursions into private enterprise, illustrated by the passage of the Pure Food and Drug Act of 1906. Advertisers feared restrictive legislation, and their fears were borne out by the passage of the Federal Trade Commission Act in 1914.[2]

During the 1930s, self-regulatory efforts increased. A Review Committee of advertising professionals was created to deal with deceptive advertising. Anti-business and anti-advertising sentiment arose again during the Great Depression and Congress passed the Wheeler-Lea Amendments to the Federal Trade Commission Act in 1938. Yet there was little self-regulatory activity in quiescent periods marked by healthy economies, little public criticism and little threat from government, as in the 1920s.[3]

Public opinion surveys of attitudes toward consumerism, business and advertising in the 1960s showed that early in the decade the majority of studies reflected either positive or mixed attitudes toward advertising. In contrast, studies later in the 1960s and early 1970s reflected more negative attitudes toward advertising and a growing interest in consumerism.[4]

During the same period Congress passed a host of consumer-minded bills, including "truth-in-packaging" legislation, the National Traffic and Motor Vehicle Safety Act and the Public Health Cigarette Smoking Act that banned cigarette advertising from the broadcast media.

The executive branch of government was active as well. Presidents Kennedy, Johnson and Nixon all sent consumer messages to Congress. The position of special assistant to the President for consumer affairs, the Office of Consumer Affairs, the Consumer Advisory Council and the Committee on Consumer Interests were all established in that period. The sheer amount of consumer protection activity at the federal level during the 1960s and early 1970s far surpassed that of any other period in U.S. history.[5]

The 1960s began with the appointment of Paul Rand Dixon as FTC chairman. As the decade progressed, Dixon increasingly eschewed formal procedures, actions and prosecutions in favor of the informal rules and guidelines he preferred as "positive" deterrents to deceptive advertising. However, the Nader report on

the Federal Trade Commission was a scathing indictment of the agency's lethargy.[6] An investigation by a specially appointed task force from the American Bar Association followed,[7] and, although the language of the ABA report was not as zealous, the conclusion was essentially the same: the FTC had fallen short as a protector of the consumer. These reports, and the publicity surrounding them, led to the appointment of a new chairman and a revitalization of the agency. The FTC developed new procedures, the number of formal actions increased (in 1971 and 1972) and harsher sanctions were employed, especially the use of corrective advertising provisions in cease and desist orders.

The response of the industry at first was to make modest improvements in existing self-regulatory mechanisms, notably National Association of Broadcasting Codes for radio and television advertising. New codes were developed, the staff was enlarged and more money was spent on code activities. Better business bureaus were also active. However, the gathering storm of consumerism had not yet convinced enough members of the industry that new methods of self-regulation were needed.

Early Proposals

In 1970 Howard Bell, president of the American Advertising Federation, became a catalyst in the development of new self-regulatory measures. He had previously been a member of the NAB Code Authority and had long believed in a single, more encompassing code. AAF had been studying new approaches to self-regulation for some time.[8] At the annual meeting in June, 1970, Bell called on the group to review and report on current advertising codes, examine advertising practices that might require action, survey the feasibility of additional measures and develop plans for financing and code implementation if new measures were deemed necessary.[9] Victor Elting Jr., vice-president of advertising for Quaker Oats Company, who was elected AAF chairman at the same meeting, spoke of the need for advertising to adjust itself to the fast-changing social and political climate.[10] Elting and Bell, along with Fred Baker, a past AAF chairman, became prime movers of a new plan for self-regulation.

On September 17, 1970, Elting addressed the Chicago Advertising Club and sketched an early outline of what was to become

NARB.[11] He envisioned an independent advertising review council of seven members, four to be selected from the public, three to be chosen from the industry. If the council found an abuse, it would press for voluntary compliance with its standards. If this were not forthcoming, the media would be called upon to refuse the offending ads. Congress would be urged to provide the antitrust exemption necessary for the use of the media as a sanction. He concluded:

> There are ticking sounds that we hear in all the pressure groups, congressional hearings, and other forums that are meeting to decide our fate. Let's defuse them by having the strength and courage to determine our fate for ourselves.[12]

Advertising Age, the leading trade paper, carried the text of Elting's address[13] and later polled leaders of the trade associations. Although some were unwilling to comment, most endorsed the plan—or the idea that a new method of self-restraint was needed.[14]

Sensing that the time was right, the principals worked in private to develop the proposal. The AAF board approved it and the plan was outlined at that organization's annual government affairs conference in Washington, D.C., February 1, 1971.[15] The staff and a code director would receive complaints, investigate them and negotiate solutions with advertisers privately. Agreement to modify or withdraw an ad would terminate the case. If the advertiser did not agree and an appeal to the code director proved unsuccessful, the matter would be passed to the Advertising Standards Committee. This group, composed of an unspecified number of advertiser, agency and media persons, would hear appeals and give a confidential ruling in writing. The National Advertising Review Board would provide the ultimate review and appeal. Adverse final rulings would result in public announcement and lead to refusal of the advertising by the media.

NARB was to be composed of seven to fifteen people, a majority representing the public, to give guidance and direction for the entire mechanism. Initially, complaints were to be evaluated under existing codes, such as the Advertising Code of American Business and the Creative Code of the American Association of Advertising Agencies, but new standards would evolve from need and experience.[16]

Elting's original proposal and the modified plan for the "new" self-regulatory mechanism included a strong sanction. If an ad-

vertisement was found deceptive and appeals by the advertiser to NARB proved unsuccessful, the advertisement had to be withdrawn or corrected within 90 days. If not, media representatives of the Advertising Standards Committee and other media affiliates would implement the sanction by refusing the ad.

The British Mechanism

The model and inspiration for this plan originated in the United Kingdom in 1962. Like the Elting proposal, the British system has only two principal bodies but, in practice, three operational tiers. A secretariat serving both the Code of Advertising Practice Committee (CAP) and the Advertising Standards Authority (ASA) investigates consumer complaints and monitors print advertising randomly. It also provides prepublication guidance on copy.

Most matters are handled on that level. Difficult, controversial and complicated matters are turned over to the Code of Advertising Practice Committee, which also handles complaints from competitors. It consists of representatives of 20 advertising organizations, including advertisers, agencies and all types of media. The 10-member Advertising Standards Authority which supervises both the secretariat and the CAP Committee also has the responsibility to review and modify the British Code of Advertising Practice, the code on which the entire mechanism is based. Membership in the ASA is equally divided between advertisers and public representatives with no affiliation with the trade. When complaints cannot be successfully handled by the secretariat or the committee, they are referred to the ASA.

The primary sanction for breaches of the British Code is a refusal of advertising by the media. Media representatives of the ASA/CAP circulate confidential memoranda listing offenders, a "blacklist" authorizing media refusal. In cases of flagrant or repeated violations, the ASA publicizes names.

There is little doubt that the mechanism has been successful, handling about 300 cases a year.[18] However, unlike other British institutions that have been transplantable to American soil, the ASA/CAP mechanism and the Elting proposal derived from it ran afoul of American antitrust laws. Here concerted action by advertisers and media to refuse advertising constitutes restraint of

trade in violation of the Sherman and possibly the Clayton and Federal Trade Commission Acts. Britain has no such laws.[19]

These laws, as interpreted by the courts and enforced by the FTC and the U.S. Department of Justice, provide barriers to industry-wide sanctions. The courts have often doubted the altruism of industry self-regulatory programs and seen them instead as a method of eliminating competition. As one antitrust scholar, Jerrold Van Cise, has put it, "Marching behind banners and slogans of fair competition, these companies have all too soon tired of public service and have then retired to liquidate competition in the good fellowship of private room service."[20]

Court decisions have set relatively narrow parameters for acceptable self regulation within the antitrust laws. The National Industrial Recovery Act of 1933, which suspended antitrust laws for 700 industries and encouraged industry-wide Codes of Fair Competition, was invalidated by the U.S. Supreme Court two years later.[21] A year later the Supreme Court drew the lines more clearly. While it praised self-regulation as sometimes more effective than law, it nevertheless struck down the ethical code of the Sugar Institute as a restraint of trade with anticompetitive effects.[22] Indeed, motives seem to be irrelevant to the courts if the code is anti-competitive in purpose or effect. Boycotting or "blacklisting" a competitor, however unscrupulous, is deemed an unlawful restraint of trade, and decisions throughout this century have invalidated such codes even when shown to be beneficial to the public.[23]

Another case of interest, though not concerned with self regulation, directly involved advertising trade associations and a "blacklist." In 1955, Justice filed a civil antitrust suit against the American Association of Advertising Agencies and five media associations. The AAAA provided the media a list of "bona fide" agencies eligible to receive the 15 per cent commission. The Justice Department alleged that the concerted action of the AAAA in developing the list and the media in using it constituted a restraint of trade under the Sherman Act. The associations signed a consent decree and stopped the practice.[24]

It is unlikely that industry-wide self regulation can be effective without sanctions, yet the more effective they are the greater the risk of violating the Sherman Act.[25] Nevertheless, Victor Elting had reason to believe antitrust exemption might be possible. Other

industries such as farm cooperatives, labor unions and professional sports, had been granted antitrust immunity through legislation. In fact, such piecemeal exemption had caused as much as one-quarter of the nation's commerce to escape antitrust action.[26] Some are based on an industry's ability to regulate itself.[27] Legal scholar Harry Levin suggests the Justice Department and FTC (as opposed to the courts) might be more lenient in bringing cases where the purpose of the program is socially useful and devoid of the taint of self-service. The Cigarette Advertising Code of 1966 is given as an example.[28] Van Cise agrees, saying that he feels advertising codes in particular have been granted a practical—if not legal—exemption.

> Not only is the government familiar with these helpful policing programs, but Congressional hearings have viewed them favorably. Any theoretical proceedings by our enforcement agencies charging their sponsors with alleged technical violations of the antitrust laws would result in a storm of well-deserved protest from both Congress and the public. Necessity knows no antitrust law.[29]

When the Elting plan was formally presented at an AAF in Washington in February, 1971, it was supplemented by a "bullish report" on self-regulation in Britain by John Hobson, chairman of the Advertising Association of Great Britain, who noted that "the menacing specters of restriction, taxation and interference were constantly hovering over us" before the ASA/CAP mechanism was worked out.[30] Virginia Knauer, the President's advisor on consumer affairs, told the conference the FTC "is now considered a young filly who is kicking her heels, and the kick hurts."[31] Elisha Gray II, chairman of the Council of Better Business Bureaus, suggested his revitalized organization might serve as the code enforcement staff, since it had already engaged in many of the same functions. The offer was later accepted.[32]

But FTC Chairman Miles Kirkpatrick, although he said he favored self-regulation, entered a caveat that seemed diected at the media sanction and possible anti-trust consequences. The FTC "cannot and will not condone any plan of self-regulation which because of defects in its structure or operation poses danger to the competitive vitality of the industry affected," he said, adding that the FTC "would be in an excellent position to give guidance" in determining what was legal and what was illegal.[33]

Shortly thereafter, AAF representatives met with the chairman and staff of the FTC to outline the plan and seek approval.[34] AAF

lawyers subsequently advised deletion of the media sanction,[35] as did attorneys for the Council of Better Business Bureaus.[36] Howard Bell and other AAF leaders had been cool toward media sanctions for fear of antitrust action[37] and it was believed that some advertisers disapproved such a severe sanction.[38] Thus, beset by problems from both within and without, the media sanction was dropped.[39]

AAF representatives had been talking with their counterparts in other trade organizations besides the CBBB, including the Association of National Advertisers (ANA) and the AAAA. It was an intense period of bargaining and maneuvering in an attempt to hammer out a compromise, and the media sanction was only one item in the debate. Another major one concerned public membership. Some advertising people did not want a self-regulatory mechanism in which the majority of the National Advertising Review Board was from outside the industry. Said Howard Bell, "the industry was not about to turn over the self-regulatory mechanism to a non-industry group. It was just that simple."[40]

A revised proposal was presented in a meeting with U.S. Department of Commerce personnel in Washington on March 22, 1971. It suggested that both publicity and referral of challenged ads be to an appropriate federal agency after the CBBB had received and judged complaints, replacing the Advertising Standards Committee as the second tier, presumably in fear of antitrust consequences; since the media could not provide a sanction, media representatives should not serve as part of the judgment mechanism. Instead, the top tier, the National Advertising Review Board, was to be expanded to 15 to 25 people, with public members, advertisers and agency personnel still included, the ratio of public members being "undecided."[42]

Still more revisions were forthcoming. The pace was feverish, with government hearings and the threat of legislation hanging over industry heads. The final version, the third revision of Elting's September proposal, emerged in less than eight months.

The Final Draft and the Hearings

The official announcement of the final plan was to have been made at a press conference with the four involved trade associations

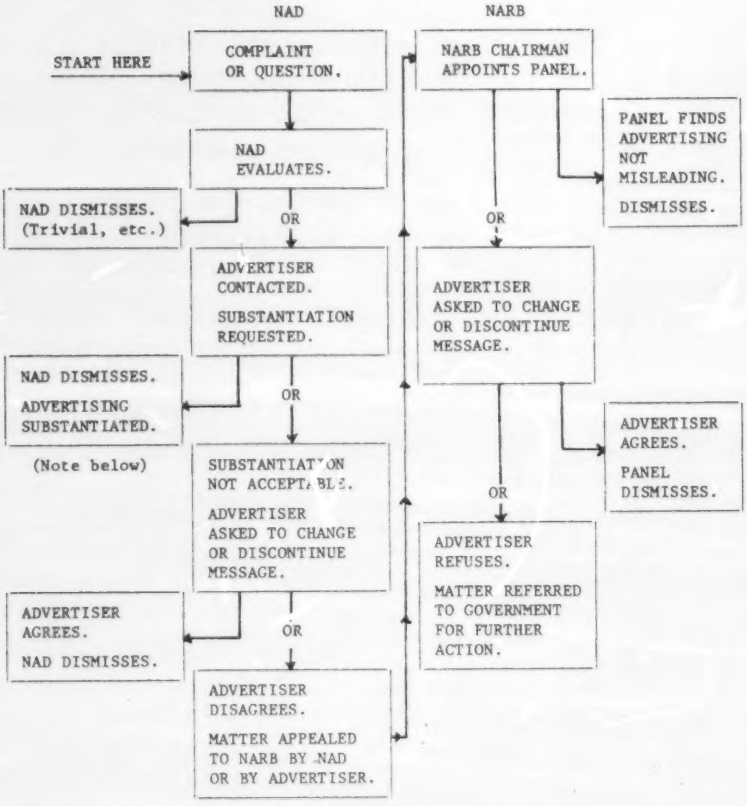
(AAF, CBBB, AAAA, ANA) in New York on May 26, 1971.[43] However, John Crichton, president of the AAAA, revealed the proposal at a closed business session of the annual meeting of the AAAA at White Sulphur Springs, West Virginia, on May 13, 1971,[44] and, although the remarks were supposedly off the record, *Advertising Age* reported them on page one four days later.[45] The press conference was cancelled and Victor Elting made the first official announcement of the plan at a meeting of the CBBB in Miami on May 18, 1971.[46] It came within a week of an announcement that the FTC was going to hold hearings on modern advertising practices in the fall,[47] two weeks before the FTC's expanded advertising substantiation program took effect, less than three weeks before the beginning of the House subcommittee hearings on advertising codes and their effects on small business and consumers,[48] and approximately one month after the introduction of the McGovern-Moss "truth in advertising" bill (S. 1461) in the Senate for which hearings were scheduled for October, 1971.[49]

The House subcommittee hearings on advertising codes and their effects on small business and consumers took place in June, 1971, the first opportunity for the trade to present the NARB plan to any level of government.

The final plan called for a group of advertising professionals to serve as the staff of the National Advertising Division of the CBBB, to give advance advisory opinions to advertisers and to receive complaints from all sources, including some developed through internal monitoring. After submission of a complaint, NAD first decides whether or not the case deals with misleading advertising and is national in character. If the complaint is not dismissed on either grounds, advertisers are then asked in private to discuss their claims, substantiate them and, if substantiation is judged inadequate, to modify or discontinue them. It was expected that 95 per cent of the complaints might be resolved at this level.[50]

Where the advertiser does not agree with NAD or finds the advertiser unwilling to negotiate, a National Advertising Review Board serves as a court of appeals. (See Figure 1.) It is composed of 50 members—30 advertisers, 10 prominent agency executives (with 10 agency alternates) and 10 public members, public members being defined as "nonindustry" persons who have a record of

FIGURE 1
Advertising Self-Regulation Procedures Step-by-Step



Reproduced from William Ewen's *The National Advertising Review Board 1971-1975: A Four Year Review and Perspective on Advertising Industry Self-Regulation*, pamphlet published by the National Advertising Review Board, 1975, p. 12.

Note: If the original complaint originated outside the system, the outside complainant at this point can appeal to the Chairman of NARB for a panel adjudication. Granting of such appeals is at the Chairman's discretion.

achievement in the public interest. Panels of five, reflecting the same proportionate membership, are drawn to hear particular appeals. (The final plan enlarged NARB to avoid conflicts of interest owing to the multi-account nature of agencies, to permit several panels to function simultaneously, and to control the work load.[51] NARB members, unlike the NAD staff, serve part-time as panels are convened.[52])

NARB's chairman oversees a small permanent staff to review the progress of the self-regulatory program, recommend and endorse new standards where appropriate, issue general reports on trends and problems in advertising and maintain a dialogue with government and the public.[53]

When a case is appealed to NARB, the panel reviews the complaint and staff findings and allows the advertiser a full evidentiary hearing. If the panel concludes that the advertisement in question is not deceptive, the case is dropped. If it decides the ad is deceptive, the advertiser is advised and asked to change or withdraw it. In cases where the decision of the panel is not accepted and compliance is not forthcoming, a public announcement names the advertiser and cites particulars of the case. The advertiser's side of the story can be included in this same announcement. Only then is the case file turned over to an appropriate government agency.[54]

The process deals only with truth and accuracy in national advertising.[55] Questions of taste and morality are not handled by NAD or NARB, although they may be included in the general reports on trends and problems in advertising. Retail and local advertising deception were to be handled by local better business bureaus.[56]

The National Advertising Review Council (NARC) was formed as a steering committee to develop by-laws, recommend staff members and elect members of NARB. Composed of the chairmen and presidents of the four participating trade associations, it does not become involved in case activity.[57] Funding for the entire operation comes from the CBBB.[58]

The essentials of the plan bear some resemblance to the British system, although it omits the media refusal sanction and substitutes referral to government. Both have three tiers but in the American plan only two tiers are actively engaged in combating deceptive advertising. The American plan also differs in the proportion of

public membership; a majority of advertiser members was included to insure cooperation from sponsoring groups. The American plan has no guidelines equivalent to the British Code of Advertising Practice.

Before members or staff had been appointed, a "salvo of consumerist skepticism" was immediately leveled at the proposal.[59] The day after the presentation to the House subcommittee, Chairman John Dingell (D., Mich.) said he was afraid the public members might really be "industry people under another name."[60] Two days later consumer activist Robert Choate told the subcommittee the plan was "but a shadow of its former self" and had been "watered down" by reducing the number of public members. He thought at least 40 per cent should come from outside trade.[61] A former member of the code staff of the NAB, Stephen Bluestone, thought it impossible for advertising people to be objective in evaluating complaints.[62] Erma Angevine, executive director of the Consumer Federation of America, said, "If advertising representatives advancing self-regulation hope it will stop the consumer revolution, they are deluding themselves."[63] In testimony before the subcommittee, Virginia Knauer, the President's advisor on consumer affairs, voiced deep reservations about the small proportion of public members.[64] Ralph Nader thought self-regulation could not be relied upon because of 1) lack of enforcement power; 2) no adequate right of appeal for the public; 3) reluctance to publicize facts and refer questions to government; 4) a tendency to steer clear of situations involving litigation; and 5) lack of adequate testing facilities.[65]

Nevertheless, NAD was staffed and began receiving complaints by the summer of 1971. Roger Purdon, former creative director for the Leo Burnett/LPE advertising agency in Great Britain, was hired to head NAD.[66] Members were being recruited for NARB, and William Ewen of the Borden Company was chosen as executive director. He had served Borden for 36 years, most recently as corporate advertising director and executive director of public affairs.[67] Ewen asked an old Princeton classmate, Charles Yost, to become NARB's first chairman. Yost, who had been a U.S. ambassador to the United Nations, divided his time between NARB and his position as policy lecturer at Columbia University. Yost's appointment, along with those of all the other NARB members,

was announced at a press conference in New York on September 29.[68]

The membership read like *Who's Who*. Included were presidents and chairmen of the boards of the nation's largest advertising agencies such as Foote, Cone & Belding, N.W. Ayer & Son, and Ted Bates & Company. Included among the 30 advertiser members were ranking personnel from such large firms as Ralston Purina, Scott Paper, General Foods and Eastman Kodak. The public members included four academics: sociologist Raymond Bauer of the Harvard University Graduate School of Business, Otis Pease, a University of Washington history professor who had written a book critical of advertising self-regulation, Virginia Trotter of the University of Nebraska and Harold Williams of UCLA. It included three former government people: Kenneth Cox, former commissioner of the FTC; Arnold Elkind, former chairman of the U.S. Product Safety Council, and LeRoy Collins, former governor of Florida and NAB president. It also included Benny Kass, a Washington attorney and consumer activist, and Aurelia Toyer Miller of the YWCA. Although an earlier decision had excluded media representatives, Norman Cousins, editor of *Saturday Review*, was chosen as a public member.[69] *Advertising Age* offered its editorial endorsement: "Got to it, Mr. Yost. If you and your colleagues are fair and firm, you can count on our support."[70]

It needed all the support it could get. Senate hearings on the McGovern-Moss "truth in advertising" bill and FTC hearings on modern advertising practices both began during October, 1971. The McGovern-Moss bill would require the advertiser to have on hand documentation for advertising claims pertaining to safety, performance, efficacy, product characteristics and price and to provide this information to any consumer who requested it. During the hearings Senator George McGovern (D., S.D.) said that the adoption of effective self-regulation by the advertising industry was an appropriate alternative, but thought this unlikely since, in his opinion, the industry had had ample opportunity and had failed.

Although Howard Bell did not appear, a letter from him included in the record repeated testimony he had just given at the FTC hearings that spelled out, for the first time, details on such matters as term of office, definitions of terms, compensation and indemnifaction and a list of members. Bell's personal statement

included the first public disclosure that the blueprint for local advertising review boards (LARBs) was being drawn up. The Statement of Organization and Procedures also promised that NARB would promulgate, adopt, amend and publish a set of advertising standards to aid in the evaluation of truth and accuracy in national advertising.[71]

The hearings recessed to reconvene seven months later. At that time Chairman Yost testified on behalf of NARB that the existence of the FTC and NARB constituted effective deterrents to deceptive advertising and recommended that the McGovern-Moss bill be laid over pending further evaluation of the existing means of enforcement, especially NARB.[72] The bill was never enacted.

The simultaneous FTC hearings in October and November of 1971 were called to educate the commission about the functions and effects of advertising. Witnesses from the trade and media, academics, researchers, consumers and consumer activists were called.

Advertisers had feared the hearings would be "another Washington circus" where advertising would be blamed for a host of social and economic ills.[73] The results of the hearings, however, were inconclusive. The FTC found that advertisers themselves were unclear as to how advertising works. Regarding self-regulation, a staff report concluded that "a considerable task is already being performed by these various self-regulatory practices and institutions. But, there remains room for improvement."[74] The hearings did give the trade a podium to announce, to both government and the public, that a serious new method of self-restraint had been organized and was in operation.

Meanwhile the promised blueprint for the local advertising review boards was published. In form, it followed the national plan quite closely: a constituency of 60 per cent advertisers, 20 per cent agency personnel and 20 per cent public members to serve as the LARB. Like the parent organization, it would exclude a media constituency due to possible antitrust ramifications. Local BBBs would serve the function that NAD performs on the national level. Local participants were urged to consult local attorneys to review every aspect of the project. Recalcitrant advertisers were to be referred to the appropriate local or state agency.[75]

About four months later the first LARB was formed in Phoenix, Ariz. The only problem in Phoenix lay in obtaining insurance against libel and slander,[76] foreshadowing a problem that later dealt a blow to all of them.

NARB held its first annual meeting in New York on November 18, 1971. Widely varying opinions as to the scope of NARB's activities emerged.[77] The group did reaffirm some of the stated procedures and agreed that speed in handling complaints should be given high priority. A steering committee was elected to develop standards and guidelines for judging advertising.[78] A second meeting of the Board in New York January 20, 1972, came closer to unanimity.[79] Despite the promise that NARB would promulgate and adopt advertising standards, steering committee discussions led to the abandonment of this idea as "impractical" and "needlessly restrictive."[80] The full board then voted overwhelmingly to judge each case on its own merits.

The board did approve a broad advertising evaluation policy statement, which implied that existing codes woud provide guidance, as would government decisions, CBBB precedents and early NARB cases. The statement clearly showed that NARB would not be tied to a single code, as in Great Britain, but would use informal codes and informal and formal precedents applicable to particular situations. The policy statement also suggested that five-member consultive panels be appointed from time to time to issue reports on broader areas of concern not related to specific cases involving truth and accuracy.

Early Casework and Operations: A Rough Beginning

Before the official documents had been written and adopted, consumer groups began testing the system with large numbers of complaints. Mark Silbergeld, a one-time FTC staff member associated with Ralph Nader, submitted 10 complaints in late 1971. Some were not within the purview of the organization. For instance, Silbergeld wanted to stop the advertising for Mattel's Shoppin' Cheryl Doll and Supermarket Game because it shaped views toward the indiscriminate consumption of goods. By NARB's definitions this did not involve deceptive advertising. Silbergeld also asked NARB to require corrective ads in several instances,[82] again, not within NARB's purview. A public member of NARB, Benny Kass,

submitted his own test cases. On of them was also clearly not a matter of deception: Tareyton's use of an environmental theme to sell a charcoal filter for the kitchen faucet. Kass did not claim the ads were deceptive—only that the environmental tie-in was inappropriate.[83] Erma Angevine, representing the Consumer Federation of America (CFA), submitted 27 complaints,[84] but Tom Ryan Jr., representing the Missouri Public Interest Research Group (MoPIRG), led the field with 52 test cases during the last half of 1972.[85]

Roger Purdon, head of NAD, addressing the AAAA eastern annual conference on June 5, reviewed some of the problem areas and added a note of caution about children's advertising, but said the new mechanism of self-regulation was working.[86]

Such optimism was apparently premature. It was a difficult beginning for NAD/NARB. Consumer advocates were not about to give the staff a reasonable "shake-down" period, and flooded NAD with complaints, many of which could hardly be construed to involve deceptive advertising. NAD, applying a standard of deception far wider than the literal and legal one, still rejected many of them.[87] The complainants, unhappy with early results, reported the information to *Advertising Age*, and in contrast to the wishes of those who established the mechanism, names of defendants and particulars of cases began to appear in the trade press.

As details of more cases leaked to the press, Stanley Cohen, Washington editor of *Advertising Age*, took the organization to task:

> Under the ground rules, the self-regulators don't discuss their cases. This assures advertisers, who prefer to settle disputes without the kind of damaging publicity they encounter at FTC. But it also shields incompetence and non-performance, which betrays the hopes of those who believe a competent program of self-regulation is the industry's best protection against more government intervention.
>
> . . . . . .
>
> Mr. Silbergeld and Ms. Angevine have accumulated an ample supply of letters and opinions which can be used to support charges of poor staff work, pro-industry bias and an inability to get the job done.[88]

An *Advertising Age* editorial echoed the same thought: "It looks like the honeymoon is just about over for the industry's self-regulation apparatus." After noting that Silbergeld and Angevine had waited up to 10 months for activity on some of their complaints, the editorial commented:

It now appears that this approach, however commendable, isn't working. Instead of giving the impression of a smoothly oiled machine, judiciously and expeditiously cranking out decisions, the self-regulatory bodies are evoking the idea that they aren't doing much of anything.[89]

As a result of this criticism and at the insistence of Benny Kass, NARC held a meeting on August 16, 1972. There was a general expression of support for Roger Purdon, but some concern was expressed about his administrative abilities. Although no publicity surrounded it and the results were not made public, a review of NAD's work was conducted by Richard Scheidker, a senior vice-president of the AAAA, which resulted in several changes that are discussed below.[90] Some members favored a policy change to make all NAD and NARB findings public, while others, notably ANA representatives, expressed reservations. The council voted to release rulings only when both the advertiser and complainant agreed.[91]

Cohen, for one, was not satisfied with this "halfway" measure, saying "it is neither philosophically nor pragmatically sound."[92] He argued that the industry needed to know the rulings to improve performance, since the organization had not published guidelines concerning deception and the trade could only rely on precedents set by NAD and NARB rulings; unless these were disclosed, advertisers and agencies had no measure of the criteria employed. An *Advertising Age* editorial called the new information policy "nonsense" under the headline "NARC's Disclosure Policy Does No One Any Favors."[93]

Then, on August 30, 1972, public member LeRoy Collins resigned. Collins spoke highly of Howard Bell, Charles Yost and William Ewen, but cited the lack of published guidelines, the failure to make decisions public and the lack of speed and efficiency in the adjudication process among his reasons.

Shortly thereafter public member Kass charged that some complaints were lost, left on desks or never acted upon.[95] Purdon disputed this, but there is little reason to doubt Kass' accusation. The organization was approximately a year old and still had not dug itself out from under the initial welter of complaints. Nor, apparently, had it reached a point of acceptable operating efficiency. For example, approximately 10 months after Kass' accusation and Purdon's denial, a Lancaster, Pa., housewife sent a well documented complaint charging American Express with false

advertising concerning its Golden Odyssey Tour of Europe. William Ewen acknowledged the letter three months later, saying the case was under consideration and would return a disposition "very promptly." The housewife never again heard from Ewen, NAD or NARB. An investigation of that complaint two years later revealed that neither had any record of a disposition of the case. Staff members thought the case might have been classified as a trade practice matter and turned over to the CBBB for disposition, but its Washington and New York offices had no knowledge of the matter or any records concerning it.[96]

Efforts to shield advertisers from publicity were dealt a further blow in September, 1972, when, after NAD review, four of Silbergeld's complaints became the subject of NARB panels. When the decisions and texts of the cases were passed to Silbergeld, he released them to *Advertising Age*. It was the first time actual case documents had appeared in the media. The editors of *Advertising Age* noted: "In view of the fact that the texts of panel decisions are not available from NARB—*AA* will print those which are made available to us."[97]

Panel Three dealt with a complaint submitted by Silbergeld the previous November which involved exaggerated sound in breaking a Hershey Krackel Candy Bar in a television commercial. NAD dismissed the complaint, saying the sound was exaggerated but the average consumer would not be deceived by it. Silbergeld appealed to NARB on February 29, 1972, and the panel agreed with NAD and rejected the appeal.[98]

Panel Four convened May 24, 1972, to review an appeal by Silbergeld to overturn another NAD dismissal of one of his test cases. NAD said a commercial for Luden's Fifth Avenue Candy Bar did not involve deception: an actor dressed in a football uniform who claimed he ate a whole case of the candy bars before a game to make him tough, mean and smart. NAD thought the commercial a satire not intended to deceive. The NARB panel agreed.[99]

Panel Five considered an appeal about a Miles Laboratories' Chocks Vitamins commercial directed at children. NARB, in its decision of June 27, 1972, thought it deceptive only in implying potency variations among brands that were, in fact, minimal. Future advertising was modified in accordance with this decision.[100]

Panel Six met June 16 to discuss a commercial for Procter & Gamble's Bold detergent. The complainant thought it deceptive because the wording suggested Bold was the only detergent to make clothes bright. The panel disagreed, but public member Arnold Elkind and advertiser Walter Roberts whose company, Miles Laboratories, was involved in the previous NARB case, issued a dissent.[101]

A week later Silbergeld made another case public. Panel Two involved an animated commercial for the American Dairy Association. NARB reversed an earlier NAD decision and decided, on July 25, that the ad included false claims of instant energy for milk. ADA said the commercial was no longer in use but agreed not to run it again.[102] This established a pattern found in some later decisions.

By September, 1972, the bright hopes for the new method of self-restraint had dimmed considerably. The organization was beset with criticism from within and without. A public member had resigned, the internal machinery was operating slowly and five of the six NARB panel decisions had been released contrary to policy. *Advertising Age*, which had been supportive, became increasingly critical over what it termed the "incredibly shortsighted effort to hide these decisions."[103]

The Response: Modification Within the Mechanism

The men who had conceived NAD and NARB were not yet ready to give up. Howard Bell addressed AAF members in Shreveport that month and defended both. He admitted to "growing pains," and said delay in handling complaints was being remedied. He said NAD/NARB was still superior to regulatory agencies that often took years to resolve complaints. He admitted that publicity procedures needed to be changed.[104]

> It's a lot easier to talk about self-regulation than to really do it. Everybody's in favor of it, so long as it affects the other guy. The fact of the matter is it requires some very tough decisions. It's not an easy thing to do effectively, and if you do your job well, no one gives you much thanks; but you get an awful lot of flak.[105]

Foreshadowing the suggested change in information policy, NARB released a panel decision concerning General Motors' use of the phrase "Mark of Excellence" in its advertising.[106] This panel, the first, had met on May 23, 1972, and had not been publicized

because the professor of marketing who submitted the complaint did not divulge it to the press. In it, NARB upheld an earlier NAD decision that use of this slogan was not deceptive.[107]

At the annual meeting of NARB in November, 1972,[108] Chairman Yost announced that, under revised procedures, more investigations would originate from monitoring, in contrast to those generated from consumer complaints.[109] Staff members began to monitor closely two media which carry large amounts of national advertising, magazines and television, and only casually monitor the media which carry large amounts of local and retail advertising.

This shift in emphasis would allow NAD to spend its time more efficiently by concentrating on cases that were clearly within its purview and less time on complaints from consumer groups and citizens that did not involve deception as defined by NARB. NAD investigative work was bolstered with the addition of a four-member research staff that could utilize the full resources of the CBBB.[110]

New advertiser and public members were appointed to NARB to replace those whose terms had expired. The new advertiser members were high-ranking officials of large corporations. The two new public members were Carolyn Shaw Bell, a professor at Wellesley College, and Charles Goodell, a former U.S. Senator from New York, who replaced LeRoy Collins and Norman Cousins.[111]

It was announced that all NARB panel decisions would be publicized, advertisers named in the decision being given the opportunity to append a statement. The resistance to a full disclosure policy that existed in NARC just three months earlier had vanished.[112] To implement the change in the publicity policy, a public relations agency, the Bugli Company, was hired to handle NARC and NARB publicity.[113]

An annual report for 1972 released by NARB showed that NAD, since its inception, had received or initiated 444 complaints, of which 131 were dismissed and 84 upheld. There were 227 cases still under investigation as of December 31.[114] In January, 1973, NAD administratively closed 76 pending cases, which it said were preempted by government investigations, were not related to truth and accuracy, or were deemed to fall under the classification of trade practice matters and turned over to the CBBB.[115]

Also in January, NARB announced details of two panel decisions arrived at late in 1972. Panel Seven sustained an earlier NAD

decision that found Kal Kan dog food advertising "permeated with false disparagement and unsubstantiated claims" directed at a competitor, Alpo, marking the first time a competitor's complaint had been upheld. It was also the first case NAD had referred to NARB because of unsatisfactory negotiations with the company after the initial decision. Kal Kan disagreed with the decision but elected to cooperate with NARB and replace the advertisements in question.[116] Panel Eight concerned effectiveness claims for Bristol-Myers Ultra Ban 5000 Anti-Perspirant which NAD dismissed and was again upheld.[117]

The critics were subdued, but not completely mollified. Consumerist Erma Angevine said NARB was not a reliable way to protect the public from deceptive advertising. To make it so, she said, the organization should have 50 per cent public members, should develop standards, should publish every document and should take positions on questions of social responsibility.[118] Thomas Ryan, Jr. emerged as a critic when some of his test cases were not resolved to his satisfaction, especially NAD's dismissal of his complaint that Volkswagen was engaging in misleading warranty advertising.[119] Public member Benny Kass asked another public member, Raymond Bauer, to resign because the latter had been a paid consultant for ITT-Continental, and gave testimony for that firm in the Wonder Bread case before the FTC.[120] The steering committee of NARB replied that Bauer need not resign because no member would be appointed to a panel for which a conflict of interest might develop.[121] Another early adversary, Mark Silbergeld, tempered his criticism with a summary based on his test cases, five of which had led to early NARB panel reviews. He found basically good performances by NARB panels, preceded by generally inadequate evaluations by NAD.[122]

About the same time, NARB received an unexpected boost from Mary Gardiner Jones, an activist commissioner on the FTC, who told a Pittsburgh media group that NARB was "a self-regulatory effort of truly historic proportions."[123]

It appeared, with this endorsement, that the organization had left some of its darkest hours behind. It had undergone serious criticism and made positive gestures toward correcting inadequacies in procedure and operation.

Having steered NARB through its infancy, Yost resigned June 30, 1973. Yost acknowledged past difficulties but added, "I believe we are well on the way to surmounting these problems,"[124] adding that the organization could improve further through more publicity to both consumers and advertisers.

In the search for a new chairman, Miles Kirkpatrick, in private law practice since leaving the FTC, turned down the post on the grounds that future cases involving clients could cause him conflicts of interest.[125] Then, on August 24, 1973, Edward Etherington, former president of the American Stock Exchange and of Wesleyan University, was named chairman.[126] A 48-year-old lawyer with a history of involvement in business, education and public service organizations, Etherington continued his relationship with these service organizations, 11 business firms and several corporate boards, including American Express Company and the American Can Company. When asked if this constituted a conflict of interest, he replied this was "literally impossible" because the chairman makes no judgments and only appoints panels.[127] He could, of course, affect decisions through the people he appointed.

Later in the year, Roger Purdon, who had directed NAD staff work since its inception, submitted his resignation effective at the end of the year. Purdon thought the new organization was working well because "business levels better with business than it levels with government."[128] He thought NAD and NARB might be strengthened with more staff, more financing and more publicity. Roland Campbell, who had retired as director of creative services in the corporate marketing department of General Foods Corporation, was put in charge of NAD and also the larger New York office of the CBBB, of which NAD is a part.[129] A thread of continuity in operations was maintained through Robert Gertenbach, a lawyer who was then deputy director of NAD, who came to NAD in February, 1973, after 14 years in legal work in trade regulation for large firms such as Lipton.[130]

At the third annual meeting of NARB, five new advertiser members and two advertising agency members were elected to replace those whose terms had expired.[131] No new public members were elected, but Benny Kass, the public member and one of the organization's most persistent critics, was elected to NARB's steering committee.[132] *Advertising Age* applauded this, saying it showed the or-

ganization was strong enough to take criticism, respond to it and fulfill its responsibilities with vigor.[132] In a special issue of *Advertising Age* at about this time, an article on self-regulation described NARB as the "top cop" that "for the first time gives the industry a wide-ranging mechanism for dealing with deception in national advertising wherever it might occur."[134]

Lewis Engman, the new chairman of the FTC, told a group of agency people late in the year that his pragmatic approach to problems led him to believe the trade could regulate advertising better than a government bureaucracy. He called NARB "great."[135] Stanley Tannenbaum, chairman of the Kenyon & Eckhardt advertising agency and an NARB member, told the same group of his attempts to drum up support for an advertising campaign to give NARB more visibility:

> At a time there is almost universal belief that most advertising is basically dishonest, we have the facts to persuade the skeptics and cynics that our house is clean, that we in the advertising business are tougher on advertisers than the Federal Trade Commission, the Food & Drug Administration, the networks and Betty Furness all rolled up into one. And we're too mousey or busy or indifferent or dumb to communicate the facts to the people who can make us or break us.[136]

NARB panel decisions during 1973 seemed to merit such praise. Panel Nine sustained January 18 an earlier decision by NAD that Block Drug's Nytol sleeping aid ads were deceptive because they used selected portions of research out of context to imply that rival brands were unsafe. The complaint was filed by the J.B. Williams Company, makers of Sominex.[137] Advertisements containing such misleading implications disappeared.

Panel Ten upheld an April 9 NAD dismissal of false advertising charges against American Oil Company. It found Amoco's claims adequately substantiated by survey data and ruled that the use of Johnny Cash did not constitute a deceptive testimonial because he appeared as a presenter, not as an endorser.[138]

Panel Eleven on April 4 reversed an earlier NAD decision and found a Volkswagen warranty ad deceptive because it omitted features of competitors' warranties in its comparisons.[139] This particular warranty ad was withdrawn by the company.

Panel Twelve, in the second NARB case involving Miles Laboratories, upheld on May 30 an earlier NAD dismissal deciding that the need for iron suplementation in the diets of women of

child-bearing age had been established and, therefore, ads for One-A-Day Vitamins + Iron were not deceptive. The panel did recommend that future ads be more carefully directed at this age group.[140]

Panel Thirteen was named when NAD was unable to negotiate successfully with Ralston Purina Company, manufacturer of Chuck Wagon Dinner for dogs. NAD said the "tender, juicy chunks" depicted appeared to be meat when in fact they were soya. When Ralston Purina shelved the old ad and produced a new one that eliminated that claim, the panel dismissed the case in a telephone conference on August 1.[141]

NAD asked NARB to convene a panel to review advertising claims made by the Sugar Association that sugar is "good food" and a nutrient. Panel Fourteen, on October 24, found these claims to be inadequately substantiated but dismissed the case when the Sugar Association withdrew the ad and promised not to advertise such claims again.[142] In this case, as in the previous one, dismissal did not imply the ad was not deceptive.

Panel Fifteen's case centered on Hardee's Food System's use of the term "charco-broiled" to describe its hamburgers in both advertisements and other promotion materials, including signs on the premises. The panel decided July 30 to support NAD's conclusion that the term did not accurately describe the cooking process, and was therefore deceptive,[143] the first installment in one of NARB's longest and most difficult cases which by January, 1979, still had not been resolved. Although all advertising and some promotional materials have been modified, on-premise signs in some locations have not. It is the single case to come before NARB that has not been resolved.

Another difficult case in 1973 involved an advertisement purporting to show how Schick's Flexamatic electric razor shaved beards closer than Norelco, Remington or Sunbeam models. The investigation resulted from NAD monitoring but complaints were subsequently received from competitors. NAD found the ad misleading in a number of particulars. When Schick was unwilling to abide by the decision, the matter proceeded to NARB.[144] In September, Sperry Rand Corporation filed a civil suit against Schick, which prompted Schick to ask NARB to suspend its investigation. "To its everlasting credit," *Advertising Age* editorialized, "NARB held fast."[145] The panel met again on September

25, October 18 and 23 before arriving at its 17-page decision, finding the campaign false in some details and misleading in its overall implications.[146] Future advertisements omitted the comparison.

The last of nine panel decisions in 1973 was Panel Seventeen's case involving Fram Corporation's "You can pay me now . . . or pay me later" campaign for its oil filters. On October 10, NARB upheld an earlier decision that the campaign was not literally true because there was no inevitable causal relationship between expensive engine repairs and the failure to use Fram oil filters with every oil change.[147] Modified commercials were later submitted and approved but appeared to this writer to be quite similar and equally deceptive.

In 1974 NARB convened six panels and pubished its first consultative panel report. Panel Eighteen was formed when American Home Products refused to provide substantiation for claims covering its Easy-Off Oven Cleaner because it had already provided such information to the FTC, which, it said, had deemed it adequate. NAD obtained substantiation data from the FTC, reviewed it and agreed it supported claims the brand had "33 per cent more power cleaner than the other popular foam oven spray."[148] NAD recommended dismissal and the panel concurred on March 18.[149]

Panel Nineteen investigated the Carte Blanche Corproation's claim that "A lot of restaurants and hotels don't take American Express—but do take Carte Blanche."[150] When the advertiser refused to supply supporting documentation, NAD passed the case to the NARB panel, which on May 9 declared the ad potentially misleading. A regional edition of a travel guide offered as substantiation showed only 5 per cent of establishments honored Carte Blanche but not American Express.[151] Carte Blanche concluded the case by writing that the matter was "moot"; the advertising was no longer running. However, the company agreed not to disseminate such claims in the future.[152]

NAD dismissed a complaint against a Bethlehem Steel Corporation ad that claimed coal to be the only proven source of energy for now and the next 400 years and the complainant, the Geothermal Energy Institute, appealed to NARB. Panel Twenty, after reviewing the ad and supporting documentation from Bethlehem Steel, reversed NAD's decision and found the ad misleading on

July 13. Bethlehem did not agree with the decision but stated it had no intention of using the ad again.[153]

NAD dismissed a complaint lodged at Beneficial Finance Company's "You're good for more" campaign. Upon appeal, NARB Panel Twenty-One agreed the claim was not misleading and was adequately supported by fact, but did urge all advertisers to avoid dangling comparatives. The panel met first on September 19, 1974, and gave its decision on March 25, 1975.[154]

Panel Twenty-Two's case involved a comparative advertisement for Sperry Rand Corporation's Remington Electric Shaver which, in the wake of the earlier Schick ad, launched a comparative advertisement that showed Remington shaved closer than Schick's Flexamatic. NAD initiated the complaint through monitoring. When Sperry Rand proved uncooperative, the matter was turned over to NARB. Since the company was engaged in private litigation with Schick at the time, the company refused to submit supporting documentation or even take part. When NARB reaffirmed its intention to proceed with a panel hearing to arrive at a decision, Sperry Rand threatened a lawsuit but did indicate the ad had been discontinued and would not be run again. On October 24, the panel dismissed the case on that assurance without judging the merits of the complaint.[155]

Panel Twenty-Three was named when Zenith Radio Corporation refused to modify or discontinue an advertisement that emphasized that Zenith sets were manufactured in America. NAD judged the ad misleading when it was found that 14.5 per cent of the components were of foreign manufacture. Zenith reversed its position and agreed to discontinue the ad after referral to NARB. The panel never met but agreed through correspondence in September to dismiss the case.[156]

In June, 1974, an NARB advisory panel issued a white paper on product advertising and consumer safety, the first report issued by NARB that did not concern a decision regarding truth and accuracy in advertising claims. An earlier consultative panel on energy advertising had simply issued recommendations. Over a year in preparation, the report warned agencies against inadvertent safety errors in preparation of advertisements for products, and included guidelines for advertisers of high risk products. Public

member Arnold Elkind, who had been chairman of the National Commission on Product Safety, served as counsel to the panel.[157]

NAD during the year received 174 complaints, 69 of which were developed from internal monitoring. Due to cases left from the prior year, 200 cases were closed by NAD in 1974; 75 were dismissed because of adequate substantiation, 65 resulted in modification or discontinuance, 58 were adminstratively closed as not within NAD's purview and 2 were referred to NARB.[158]

In addition, 1974 saw the creation of the Children's Review Unit as a part of NAD, the result of almost a year of negotiations and disputes among the FTC, consumer groups, manufacturers of children's products, trade associations and NAD/NARB. The previous August, FTC Chairman Engman had pinpointed children's advertising as of special interest and gave the advertising industry an opportunity to work with consumer groups to develop reforms. But the two sides were unable to agree. In the words of Stanley Cohen, "Ten months of acrimonious negotiations . . . poisoned the atmosphere."[159] As polarization developed, the industry worked on its own plan to establish a children's unit within NAD; on May 20 the trade presented the plan to the FTC.[160]

The Children's Review Unit was to have a three-member staff that would work under the Children's Television Advertising Guidelines developed by the ANA in 1972. The staff, in its review of advertisements aimed at children, would be aided by an independent group of psychologists and other consultants on child behavior. In June, Emilie Griffin, a former vice-president and copy group head at Compton Advertising, came to NAD to direct the new unit and by September, the unit was staffed and operating.[161] Consumer advocates were less than impressed, but *Advertising Age* called it a "remarkable achievement."[162]

A short time later Edwin Etherington resigned as NARB chairman for health reasons.[163] William Ewen, who had served as executive director of NARB since its inception, was named acting chairman until, in October James Parton succeeded him. Ewen became deputy chairman. Founder and former president of American Heritage Publishing Company, Parton was also chief executive officer of Encyclopaedia Britannica Education Corporation.[164]

Public member Virginia Trotter resigned in mid-1974 to become assistant secretary of education in the U.S. Department of Health, Education and Welfare. The new public members appointed that year included Annette Baxter of Barnard College, Orville Brim of the Foundation for Child Development, Max Ways of *Fortune* magazine and Charles Sandage, retired head of the Department of Advertising of the University of Illinois.[165]

There was still some criticism of NAD and NARB. Tom Ryan, Jr. issued a generally critical 114-page report, *Misleading Advertising: Everybody's Business,* that summarized the 52 test cases the Missouri Public Interest Research Group had submitted in 1972, citing the need for faster complaint processing, written standards, increased public representation and public awareness.[166]

Self-Regulation on Trial: The Denver Case

However, the source of the biggest problem for the organization during 1974 was a complaint filed with a local advertising review board in Denver, Colo. It cited Pat Walker's of Colorado, Inc., a weight reduction enterprise, for making false testimonials and promises. Instead of responding to the local review board, Pat Walker's and Ve-Ri-Tas, Inc., the franchiser and supplier of advertising to the Colorado company, filed suit in July, 1975. An amended suit filed later included the local better business bureau, the local advertising review board and nine individuals of the two organizations. The lawsuit alleged violations of civil rights laws, the Fourteenth Amendment and antitrust laws and charged that self-regulation procedures violated the due process that would be guaranteed if the case were the subject of government action. A U.S. district judge denied a temporary restraining order against the review board, but instructed both sides to prepare for trial.[167]

The suit challenged not only the Denver board but threatened 20 other local advertising review boards in the country.[168] It was also construed as a threat to NAD and NARB because the local review clubs were instigated by and patterned after the national organization.

The Denver board had obtained libel insurance, not thinking that restraint of trade, which cannot be insured against, could become a legal issue. A successful suit would leave both the local organizations and individuals financially liable. Norman Gottlieb,

counsel for NARB, feared the defendants might be buried in legal costs or would withdraw the complaint through fear of personal financial loss.[169] A fund drive among better business bureaus throughout the country netted $20,000, but actual legal expenses exceeded that amount.

The legal battle in Denver was the single greatest threat to the existence of the local and national self-regulatory organizations. Local ad boards across the country slowed their activities in fear of an adverse judgment. In February, 1975, a second fund drive was launched. The national CBBB offered $10,000 and the AAF offered $5,000 in matching funds.[170] Then, in July, 1975, St. Paul Fire & Marine Insurance Company, the firm which insured local review boards against libel, agreed to cover legal fees as well, but stated it would not be held financially responsible for a judgment granted on antitrust grounds.[171] The insurance company subsequently changed the provisions of coverage and, before the case was settled, cancelled coverage for all local review boards,[172] bringing local review board activity to a standstill. Nevertheless its agreement to cover legal costs permitted the Denver case to run its course and be judged on its merits.

The decision was announced April 9, 1976.[173] Federal Judge Richard Matsch dismissed the suit on all grounds. To the restraint of trade charge he found no basis in fact since there was no attempt to persuade the media to refuse the material. And the judge agreed with the board that the ads were deceptive.[174]

The Criticism and Problems Subside

Although the legal battle in Denver stilled local review board activity, NARB announced five panel reports during 1975. One was the rehearing and final decision, on March 25, of the Beneficial Finance Company case discussed above. Another was issued from a consultative panel investigating the way advertising portrays the role of women. The remaining three concerned truth and accuracy decisions.

In March, the consultative panel chaired by public member Aurelia Toyer Miller issued its report, *Advertising and Women.* The major conclusion was that, although there was no conscious or concerted effort among advertisers to offend women, advertising sometimes reflected outmoded standards and concepts. It included

a checklist of questions for advertisers and agencies to consider when constructing ads including or directed at women.[175] The report received great media attention and drew praise from feminists. Gloria Steinem, editor of *Ms.* magazine, called it very helpful.[176] A year later a government-funded commission report to the White House on the status of women adopted many of its findings.[177]

Panel Twenty-Four probed a commercial that compared Kayser-Roth Corporation's No Nonsense Pantyhose with Hanes Corporation's L'eggs. The complaint was filed by Hanes, which also instituted a $20,000,000 damage suit. Kayser-Roth countered with a $30,000,000 suit.[178] NAD concluded that brand superiority claims were adequately substantiated but Hanes disagreed and appealed to NARB. The panel met on May 21, but could reach no decision. Before a second meeting could be called, both Kayser-Roth and Hanes asked to terminate the appeal because they had reached an out-of-court settlement, which terminated the No Nonsense commercial as well. The panel concluded that its mandate had been served and dismissed the case.[179]

Panel Twenty-Five dealt with another comparative ad. The complaint was by S.C. Johnson & Son which felt its Lemon Pledge Furniture Polish was unfairly compared in a commercial for Drackett Company's Behold. NAD thought the ad misleading but Drackett appealed to NARB. The panel's decision on October 29 found the Drackett ad misleading because, although Behold was proven superior for removing oil-based stains, the ad implied overall superiority. The panel warned that comparative advertisers must carry the added burden of conclusive proof for all product features when total superiority is claimed.[180] The following year the same panel, in a supplementary decision, approved a new Behold commercial.

The last NARB panel of the year upheld an earlier NAD decision that a Farmers Insurance Group ad was adequately substantiated, finding on October 28 that the company did offer discounts on automobile insurance to non-smokers.[181]

Although NARB convened fewer panels than in the previous year, NAD's case load held steady. It received 177 new complaints, 62 of them from monitoring. In all, 187 cases were disposed of. Advertising was found adequately substantiated in 72 instances and was discontinued or modified in 101 others. The remaining 14 cases

were closed for administrative reasons. Included in the totals are 27 cases handled by the Children's Review Unit within NAD.[182]

Funding for the national organization loomed as a problem in 1975. NAD and NARB are funded by CBBB, even housed within its New York office. In 1971 it was hoped $10,000,000 could be raised for all national CBBB operations, but it actually never had more than a $5,000,000 budget.[183] Total CBBB funding dipped to $2,500,000 during 1975.[184] As resources dwindled, an effort was made to obtain funds from advertising agencies, but although prominent agency people exhorted the industry for support, agencies responded with only $103,000, an increase of $29,000 over the previous year.[185] CBBB cut costs in other areas to keep up its funding to NAD and NARB.

More personnel changes were made in 1975. Robert Gertenbach, with almost three years of experience at NAD and promoted to director, became a vice-president of CBBB.[186] Ralph Alexander, who had more than 20 years of experience in agency work, succeeded C. Wanton Balis III as executive director of NARB in July.[187] Deputy Chairman William Ewen retired in November.[188] Twenty-two new board members were elected at the fourth annual meeting in New York on November 11. The four new public members were William Forrester of the Cornell Law School; Patricia Gayman, a former director of the California Department of Consumer Affairs; Currin Shields, head of the Conference of Consumer Organizations, and Mabel Smythe of the Phelps Stokes Fund.[189] Three months earlier, Tom Ryan, Jr. had charged that some of the public members should be termed "pseudo" public members because they were professors of business or advertising or had consulted with private industry. Since Benny Kass' term expired, Ryan felt NARB had no members affiliated with consumer organizations.[190] The aforementioned appointments quelled that criticism.

Advertising Age, although generally supportive, criticized NARB for being content with its primary role as adjudicator of case decisions. It wanted NARB to serve a wider and more positive role not confined to truth and accuracy.[191]

There was also praise. James Parton told the trade in June that the self-regulatory apparatus had accomplished "much more than anyone dared hope when the effort began in 1971."[192] Thomas

Rosch, director of the FTC's Bureau of Consumer Protection, said he had a "great deal of confidence" in NARB.[194] Virginia Knauer, once a critic, told NARB members, "Your work policing national advertising is tremendously important and in many respects you can do a better job of it than government could."[195] She noted that the procedures were more expeditious and could handle cases less expensively than the government could, but cautioned Board members not to relax because the storm clouds of government intervention had passed.[196]

The first new panel decision of 1976 announced March 3 concerned an advertisement for Ralph Ginzburg's *Moneysworth*. When NAD found Ginzburg unresponsive and uncooperative, it passed the case to NARB. After Panel Twenty-Seven was appointed, Ginzburg sent each member a letter threatening suit and told the press the group was threatening his civil liberties.[197] The panel met on February 26 to discuss the matter, heard testimony and then adjourned to await additional data from the government. Subsequently, the panel was informed the U.S. Postal Service had filed a complaint of false representation concerning the same ad. To avoid prosecution, Ginzburg signed a document promising to make no such claims again, whereupon the NARB panel termed the matter "moot" and dismissed the case.[198]

Panel Twenty-Five reconvened to deliver the supplementary opinion on April 6 in the Drackett Company matter to approve a modified commercial for Behold.[199]

Panel Twenty-Eight met on April 21 and June 3 to discuss an appeal to a complaint lodged by Tom Ryan, Jr. concerning Spalding Top-Flite golf balls. NAD had felt Spalding had substantiated its "longest ball" claims, but the NARB panel disagreed and asked Spalding to discontinue the ad. It endorsed NAD's recommendation that the industry develop a uniform test to judge different brands.[200]

The next decision was similar. The same panel members met on the same days and delivered a second decision (Twenty-Nine) relating to golf ball distance claims. It reversed NAD again and found Acushnet's "maximum distance" claims misleading because not properly qualified. It urged the maker to add the phrase "off the tee" in future advertising. Acushnet agreed and complied.[201]

A consultative panel chaired by public member Max Ways issued a press release on May 20 concerning the treatment of the elderly in advertisements which concluded that the elderly were being treated fairly and responsibly and that a published report was unnecessary.[202]

As mid-year passed, NARB completed its fifth full year of operation, having convened 29 panels to adjudicate cases involving deception. In 10 instances NARB upheld the advertiser and permitted the ads in question to continue. In another 19, NARB inquiries resulted in the modification or discontinuance of advertising. In total, then, NARB actions resulted in discontinuance or modification of advertising in 66 per cent of the 29 adjudicative panels convened.

In addition, NARB had convened five consultative panels. Full reports were issued by two and press releases with recommendations for two others. The remaining consultative panel, convened a year earlier to study comparative advertising, had not come to any conclusions at the end of NARB's fifth year.[203]

By the time NAD had completed its fifth year at the end of June, the total number of complaints processed had reached 1,054, of which 364 (35 per cent of all complaints initiated) had been dismissed because of adequate substantiation, 345 (33 per cent) resulted in modification or discontinuance, 278 (26 per cent) were administratively closed, 12 (1 per cent) were referred by NAD to NARB because of breakdowns in negotiations and 55 (5 per cent) were pending disposition. Included in the totals are 57 cases investigated by the Children's Review Unit, 38 of which resulted in advertisements being modified or discontinued.[204]

Congressman Bob Wilson (R., Calif.) congratulated NAD and NARB in a speech to the House, describing the work as "a fine demonstration of self-regulation in action."[205] Senator Warren Magnuson (D., Wash.) said "NARB has had a positive effect on advertising" and "has set, on occasion, a higher standard of proof for claims substantiation than has the Federal Trade Commission, . . ."[206] Senator Gaylord Nelson (D., Wis.), a consumer advocate like Magnuson, said NARB "has served an important purpose, [but] it has not eliminated the need for government regulation of advertising."[207] Walter Mondale, then a U.S. Senator, said self-regulation was important for all industries and was "pleased

that NARB has come . . . to accomplish this within the advertising business.'[208]

Prominent members of the advertising industry also seemed pleased.[209]

Tom Ryan, Jr. was less critical than before. He offered tempered criticism of both the FTC and NARB in testimony before the commerce, consumer and monetary affairs subcommittee of the Committee on Government Operations and later petitioned the FTC to institute a trial program that would enable that agency to ease its workload by directing complaints about national advertising to NARB, with only unresolved cases to be handled by the FTC.[210] FTC personnel subsequently "sprinkled cold water" on Ryan's suggestion.[211]

What criticism was directed at NARB in 1976 had a different ring to it, including warnings that past successes had made NAD and NARB content and less watchful. Stanley Cohen was generally pleased but thought "something has changed since the early days when NARB set the tone on touchy subjects."[212] He wanted NARB to play a wider and more positive role than simple case adjudication. Public member Carolyn Shaw Bell was afraid NAD and NARB would suffer from their own success. Because pressure for government legislation had diminished, advertisers felt less pressured and had lessened their funding and contributions.[213]

Yet there were some disappointments during 1976. James Parton, after serving as chairman for 20 months, announced his retirement as of the end of June,[214] to be succeeded on October 14 by Kenneth Cox, the former FTC commissioner who had served as a public member and chaired three panels.[215] When the FTC announced an investigation to see if self-regulation was discouraging comparative advertising,[216] members of the trade were caught off guard. Howard Bell of the AAF suggested the action "either reflects a change in policy or suggests that they [the FTC] have run out of priorities."[217] But an internal FTC memo leaked to the press suggested the targets were really the acceptance policies of media and the advertising restrictions imposed by professional and trade associations.[218] This seemed consistent with the FTC's revived interest in restraint of trade,[219] so NARB was substantially unaffected by the investigation.[220]

Summary and Conclusions

The creation in 1971 of the National Advertising Review Board and its investigative arm, the National Advertising Division, was a response by the advertising industry to the pressures and criticisms of consumerism that had mounted during the previous decade and peaked as the 1970s began. The announcement of the final plan for the creation of NARB came when the FTC was especially vigorous in complaint prosecution and had just acquired expanded powers as a result of the ad substantiation program. Separate government hearings on advertising by a House subcommittee and the FTC were about to begin. An anti-advertising bill had been introduced in the Senate and hearings were impending. Although the historical approach used here does not allow for rigorous cause-effect conclusions, it is unlikely that the announcement of the final plan for NARB and these simultaneous hearings and bills in government were mere coincidence.

There is a better explanation for the creation of NARB in 1971. As in previous periods of discontent with advertising, the industry responded with a self-regulatory effort. In contrast to previous times, the 1960s and early 1970s posed a greater threat to advertising because diffuse public sentiment was institutionalized into government actions as never before. In turn, the industry responded with a mechanism of self-regulation that went far beyond any established in the past.

As in earlier attempts at self-regulation, self-interest on the part of the establishment appears as the primary motive force. Social and political forces had sufficiently coalesced in this period so that advertising practitioners perceived that a new and stronger method of self-regulation could simultaneously reduce deception in the marketplace and serve to soften public criticism and disarm government regulation.

This does not imply that the creation of NARB was a purely self-serving act. The principals involved—notably Howard Bell, Victor Elting and Fred Baker—were not cynics merely trying to evade government action. These men had a genuine interest in the problems and believed advertising was capable of cleaning its own house. And many others who worked toward the creation of NARB or worked with it during the next five years also did so for largely altruistic reasons. However, it was this period of "critical mass" that

enabled the principals to convince other members of the establishment and the trade associations that the time had come for meaningful self-regulation. The architects of NARB continually made the point that if the trade was not willing to expend the effort and money necessary to institute meaningful reform, the government would do it for them.[220]

In contrast to most previous attempts at self-regulation, a mechanism evolved that went far beyond the development of abstract and unenforceable codes and statements of principle. It included methods of detection, methods of adjudication and sanction procedures that were meaningful reforms in the area of deceptive advertising. The final procedures agreed upon were not all that the principals had envisioned. Due to antitrust considerations and the reluctance of some members of the trade, modifications were made that resulted in a weaker mechanism than Victor Elting had originally proposed. However, even though the media sanction was deleted and the proportion of public members decreased, NARB still stood as the most significant method of self-regulation ever to emerge from within the trade.

Perhaps due to the inadequacy of attempts at self-regulation in the past, the newly created NAD and NARB were greeted with skepticism and criticism from the consumer movement and government agencies. Consumer advocates flooded NAD with test cases, some of them ill conceived. Early operational inefficiencies seemed to support the skeptics. The secrecy that had been assured advertisers in return for their cooperation hindered NAD and NARB in combating their critics. But, as time passed, procedural modifications, notably the new disclosure policy, and systematic and efficient review of cases emerged. With improved efficiency came more tempered criticism and finally praise, even from the very people who had been critical before. Other problems, large and small, plagued NAD or NARB throughout their first five years, the most important being the Denver case, with its threat of antitrust action.

Self-regulation serves the trade in two ways, as a means of eradicating deception and as a means of dealing with public criticism, with its attendant threat of government regulation. In terms of the former, the casework figures alone tell the story: 1,054 complaints acted on by NAD, 29 panel decisions and 5 consultative

panels by NARB, far surpassing that of any self-regulatory effort of the past. Inspection of the case files shows that, for the most part, the investigations were adequate and the judgments sound.

In the past, the goal of heading off criticism was served without reducing deceptive advertising significantly. NARB was superior in reducing deceptive advertising and at the same time muting public criticism and limiting government action. Congressional hearings and FTC hearings were inconclusive and no new or novel regulatory measures evolved from them. The McGovern-Moss truth-in-advertising bill never became law. FTC case activity in the area of deceptive advertising slackened, although, of course, case activity is not the only indicator of FTC effectiveness. More recently the Commission has relied on rule-making; its efforts have also been bolstered by a "trigger" feature, whereby a litigated order against one company can be applied to others in the same industry without separate adjudication.[221] The preliminary injunction powers of the FTC have also been expanded.[222]

So while methodology does not permit cause-effect conclusions, and it is possible that other variables, ranging from the health of the economy to the administration in Washington, may affect government interest in advertising, there does appear to be a clear inverse correlation between the rise of NARB and the diminution of criticism and government interest in advertising.

NOTES

1. Subsequently the model statute became the basis of advertising laws in 44 states. These state laws had limited effectiveness. See Earl Kintner, *An Antitrust Primer* (New York: Macmillan, 1964), pp. 165 and 205-6.

2. The original FTC Act was not very restrictive: for an ad to be deemed deceptive it had to be proven harmful to competitors. Yet by 1925 some 70 per cent of the Commission's cease and desist orders were directed at deceptive advertising. Kintner, *ibid.*, p. 165-6.

3. This theme runs through Otis Pease' analysis of official- and self-regulation in advertising in *The Responsibilities of American Advertising* (New Haven: Yale University Press, 1958).

4. Examples and summaries of many of these polls are found in Appendix A of Raymond Bauer and Stephen Greyser's *Advertising in America: The Consumer View* (Boston: Harvard University Press, 1968).

5. Appendix I in Ralph Gaedeke and Warren Etcheson's *Consumerism* (San Francisco: Canfield Press, 1972) lists only six "significant" consumer protection bills passed between 1872 and 1950. However, it lists five for the 1950s and another 20 for the 1960s.

6. Edward Cox, Robert Fellmeth and John Schulz, *Nader's Raiders* (New York: Grove Press, 1969).

7. *Report of the ABA Commission to Study the Federal Trade Commission* (Washington: Bureau of National Affairs, 1969).

8. Telephone conversation with Howard Bell, president of AAF, Oct. 8, 1976.

9. "AAF Moves to Trump Ad Critics," *Broadcasting*, June 29, 1970, p. 68. The AAF does not publish proceedings.

10. *Ibid.*

11. "Admen Move to Self Regulation," *Advertising Age*, Sept. 21, 1970, p. 1.

12. *Ibid.*

13. "Ad Federation Chairman Suggests Independent Review Council to Curb Abuses," *Advertising Age*, Oct. 12, 1970, p. 49.

14. "Six Ad Group Execs Support Elting Plan," *Advertising Age*, Nov. 16, 1970, p. 1.

15. "AAF Self Rule Plan Gets Down to the Nitty Gritty," *Advertising Age*, Feb. 8, 1971, p. 2.

16. *Ibid*, p. 58.

17. A detailed examination of the British system of self-regulation is found in Albert Stridsberg's *Effective Advertising Self-Regulation* (New York: International Advertising Association, 1974).

18. *Ibid.*, Appendix D.

19. For a rather unique British perspective, see A.D. Neale, *Antitrust Laws of the U.S.A.* (Cambridge: Cambridge University Press, 1970).

20. Jerrold Van Cise, "Regulation – By Business or Government?," *Harvard Business Review*, April 1966, p. 53.

21. Schecter Poultry Co. v. U.S., 295 U.S.C. 495 (1935).

22. Sugar Institute v. U.S., 297 U.S.C. 533 (1936).

23. Examples are Standard Sanitary Mfg. v. U.S., 226 U.S.C. 20 (1912); Fashion Originators' Guild v. FTC, 312 U.S.C. 457 (1941), and, more recently, Radiant Burners Inc. v. Peoples Gas & Coke Co., 364 U.S.C. 656 (1961).

24. U.S. v. American Association of Advertising Agencies, 1956 Trade Cases, Par. 71, 167.

25. For an interesting discussion of this see John Scott's *Antitrust and Trade Regulation Today: 1969* (Washington: Bureau of National Affairs, 1969), p. 16.

26. Louis Kohlmeier, *The Regulators* (New York: Harper & Row, 1969), p. 104.

27. *Ibid.*, p. 103.

28. Harry Levin, "The Limits of Self-Regulation" *Columbia Law Review*, March 1967, p. 603.

29. Van Cise, p. 53.

30. "AAF Self Rule Plan," p. 2.

31. *Ibid.*

32. *Ibid.*
33. "New AAF Plan Joins BBBs, Drops Media Boycott," *Advertising Age*, March 15, 1971, p. 81.
34. Telephone conversation with Howard Bell.
35. "Advertising Code Still Developing," *Broadcasting*, March 22, 1971, p. 58.
36. Personal conversation with Norman Gottlieb, counsel to NARB, Nov. 19, 1975.
37. Telephone conversation with Howard Bell.
38. Personal conversation with Morton Simon, Sept. 25, 1975. Howard Bell did not recall any such pressure.
39. "New AAF Plan Joins BBBs," p. 81.
40. Telephone conversation with Howard Bell.
41. "Advertising Code Still Developing," p. 58.
42. *Ibid.*
43. *New York Times*, May 19, 1971, p. 75.
44. John Crichton, "Address of the President," AAAA 1971 Annual Meeting, White Sulphur Springs, W. Va., May 13, 1971.
45. "Oft-Bruited Ad Review Board Set to Get Off Ground, 4A's Learn," *Advertising Age*, May 17, 1971, p. 1.
46. *New York Times*, May 19, 1971, p. 75.
47. Tim McGraw, "NARB: Impossible Dream?," *Freedom of Information Center Report No. 400* (Columbia: University of Missouri, 1973), p. 3.
48. Victor Elting Jr. and Howard Bell, *Statement on Behalf of the National Advertising Advisory Comittee Before the House Select Committee on Small Business Subcommittee on Activities of Regulatory Agencies Relating to Small Business*, June 7, 1971.
49. Hearing Before the Committee on Commerce, United States Senate on S.1461 and S.1753, 92nd Cong., 1st Sess., Oct. 4, 1971.
50. John Crichton, "Address of the President," p. 12.
51. *Ibid.*
52. Elting and Bell, *supra*, n. 48, p. 8.
53. *Ibid.*, p. 9.
54. *Ibid.*, p. 10.
55. *Ibid.*
56. *Ibid.*, p. 1.
57. Crichton, "Address," p. 13.
58. *Ibid.*, p. 15.
59. This phrase is found in "Self-Regulation Hit as 'Watered Down'," *Advertising Age*, June 14, 1971, p. 16.
60. "Be Sure Ad Review Unit Has True Public Participation, Admen Urged," *Advertising Age*, June 14, 1971, p. 16.
61. "Self-Regulation Hit," p. 16.
62. *Ibid.*
63. *Ibid.*
64. "Self Regulation Efforts . . .," *Advertising Age*, June 28, 1971, p. 2.
65. *Ibid.*, p. 51.

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70. "Go To It, Mr. Yost," *Advertising Age*, Oct. 18, 1971, p. 30.

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72. *Ibid.*, 2nd Sess., 1972, p. 3.

73. John Howard and James Hulbert, *Advertising and the Public Interest: A Staff Report to the Federal Trade Commission* (Chicago: Crain Communications, 1973), Foreword.

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112. *Ibid.*

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147. National Advertising Review Board, Report of Panel 17 Complaint in Regard to Television Commercials for Fram Oil Filter, Oct. 10, 1973.

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206. Senator Warren Magnuson to LuAnn Walker, May 28, 1976. Ms. Walker conducted research on opinions and attitudes toward NARB under this author's direction.

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210. American Advertising Federation, *Washington Report*, Aug. 31, 1976, p. 2.

211. The phrase is taken from "Shouldn't Turn Ad Regulation Over to NARB, FTC Argues," *Advertising Age*, Nov. 15, 1976, p. 2.

212. "AAF Members Savor Court Victories, but Self Regulation Still Needs Boost," *Advertising Age*, June 14, 1976, p. 28.

213. "FTC Says Guides Near on Ads That Name Names," *Advertising Age*, June 28, 1976, p. 3.

214. *News from the National Advertising Review Board*, May 10, 1976.

215. "Kenneth Cox Named Chairman of National Advertising Review Board," *News from the National Advertising Review Board*, Oct. 14, 1976.

216. "FTC to Investigate Possible Restraints on Use of Comparative Advertising," *FTC News Summary*, Feb. 27, 1976, p. 1.

217. "Self Regulation of Ads Faces Two Attacks," *Advertising Age*, Feb. 23, 1976, p. 1.

218. "FTC Memo Urges Look at Media Practices in Self-Regulation Area," *Advertising Age*, Apr. 12, 1976, p. 3.

219. For example, see "Commission Publishes Report on Eyeglass Advertising," *FTC News Summary*, Jan. 20, 1976, p. 1.

220. Although the mechanism was unaffected, there is reason to believe the report was affected. It provided neither meaningful guidelines nor precedents not found in earlier NARB cases. *Advertising Age* hypothesized that fear of the FTC led to what it described as a "toothless" report. See *Advertising Age*, Aug. 22, 1977, p. 62.

221. Magnuson-Moss Act 88 Stat. 2183 Sec. 103 (1975).

222. Trans-Alaska Pipeline Act 87 Stat. 993 (1973).